IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3626 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VASANT JAMANADAS PAMNANI

Versus

THALIYA GRAM PANCHAYAT AND OTHERS

==========

Appearance :

MR DHARMESH V SHAH for the Petitioner
MR BM MANGUKIYA for Respondent Nos.1 and 3.
MR HS MUNSHAW for Respondent Nos.1 and 3.
MR CL SONI for Respondent No. 1.
MR KL PANDYA, ASSISTANT GOVERNMENT PLEADER for Respondent No.2.

==========

CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 25/07/2005

ORAL JUDGMENT

1. By way of this petition, the petitioner union has tried to take advantage of financial incapacity of a Gram Panchayat which could not defend itself before the Labour Court in Reference (LCB) No.22/88 and ultimately, the Labour Court vide order dated 4th July 1996 has granted permanency to some of the members of the petitioner union and are made permanent from 01.01.1990.

2. The short facts of the case are as under:

2.1 An application before the Labour Court was moved under Section 33(C)(1) of the Industrial Disputes Act and claim was raised for an amount of Rs.22,15,000/-.

2.2 The Labour Court, Bhavnagar passed an order on 09.12.1997 with a direction to respondent No.2 to recover an amount of Rs.22,15,000/- from respondent No.1 and Recovery Certificate for the same was issued on 02.02.1998.

2.3 The petitioner-Union by number of correspondences informed the authorities to recover the said amount as early as possible, but no such effective steps are taken by respondent Nos.2 and 3 and thereby, they have failed to discharge their legal obligation. Therefore, the petitioner has filed present petition.

3. Pursuant to the order of this Court, affidavit in reply was filed by the Deputy District Development Officer and has narrated that the respondent Gram Panchayat is not in a position to comply with the order in view of the facts narrated in paragraph No.2 of the affidavit in reply.

4. Mr.Soni for the Gram Panchayat submitted that looking to the financial position of the Gram Panchayat, it is not in a position to meet with the liability.

5. When the matter was listed before this Court last time on 4th July 2005, Mr.Shah was granted time to file rejoinder, but no rejoinder is placed on record and Mr.Shah has argued the matter on merits.

6. In view of the affidavit of Deputy District Development Officer and the Gram Panchayat being a statutory authority and as Panchayat is not in a position to comply with the order, no writ can be issued. Even otherwise, the order of the Labour Court which is sought to be implemented by way of this petition, no details are given regarding employees, as to when they have attained the age of superannuation and how and on what basis the amount of Rs.2,46,000/- is arrived

at, is not made clear. In that view of the matter, no writ can be issued on the basis of the order of the Labour Court which is vague.

7. Even otherwise, in view of the Full Bench decision of this Court in case of **Amreli Nagarpalika Vs. Gujarat Predesh Municipal employees Union**, reported in 2004 (2) GLH 692, permanency granted by the Labour Court without there being any sanctioned post, is not in accordance with law. If any fresh application with all the details is submitted then it will be open for the Labour Court to consider the said application under Section 33-C(2)(1) of the Industrial Disputes Act.

8. Learned advocate for the petitioner relied upon the decision of Division Bench of this Court in the case of **Kishorbhai Dahyabhai Solanki Vs. Nagjibhai Muljibhai Patel**, reported in 2002 II CLR 246 wherein in paragraph Nos.16, 17 and 18 it is held as under:

“16. The next contention which is required to be considered as sought to be canvassed by the learned advocate appearing for the petitioners is that the in-built mechanism as provided under I.D.Act for the enforcement of the award by coercive machinery and for the execution of the award by moving appropriate application under Section 33C is illusory and it is further contended that it is, in reality, absolutely not effective remedy. In furtherance to the said contention it was also submitted by the learned counsel appearing for the petitioners that section 29 read with Section 34 of the I.D.Act empowers the competent officer to lodge complaint and the workman has no direct role in the same and it was submitted that as per the experience of large number of workmen, even though the action is complaint that breach is committed or that the award is not complied with, the Government or the competent officer of the Government are not taking immediate steps for filing prosecution against the erring employer concerned. It was also submitted that even if it accepted for the sake of argument that for the purpose of execution of the award, the machinery provided under section 33C of the I.D.Act is to be resorted, then also in the submission of the petitioners, neither the Labour Court decides such recovery application within reasonable time nor the collector takes steps immediately for the purpose of proceeding to recover the amount under Land Revenue Code after such certificates are issued by the Labour Court. In the submission of the petitioners, that is the reason why the workmen and the parties to the award who are adversely affected by the breach of non-compliance are constrained to approach this Court invoking the jurisdiction of this Court

under Contempt Act and therefore in the submission of the petitioners in view of the practical difficulties being faced by the workmen concerned it is very necessary that this Court should exercise powers under the Contempt Act for the breach of the award.

17. Before we deal with said contention, we state that merely because there is failure on the part of the competent officer to lodge prosecution, it cannot be said that the remedy becomes illusory nor can it be said to be a valid ground to hold that the remedies have become illusory and therefore the only remedy is to invoke the jurisdiction of this Court under the Contempt Act because since the Labour Courts are not deciding the matters of recovery of applications within reasonable time or that the Collectors are not proceeding to recover the amount even after receipt of certificates. At the same, the workmen or the parties to the award cannot be left to a position that even if the remedy lies they may not be in a position to invoke the same or that even if it is there the same would be rendered illusory. The position of law so far as the status of the Labour Court is concerned prior to 1998 was that the Labour Court or the Industrial Tribunals constitute under the I.D.Act were not falling within the administrative control of this Court. However, as laid down by the Apex Court in the case of State of Maharashtra V. Labour Law Practitioners' Association, reported in 1998 I CLR 850 SC, now the Labour Court also falls under the Administrative Control of this Court as provided under Article 234 of the Constitution. In view of the law laid down by the Apex Court in the mater of State of Maharashtra (Supra) the Labour Courts and the

Industrial Tribunals exercising powers under the I.D.Act are not only falling within the judicial supervision of this Court under Articles 226 & 227 of the Constitution but are also falling within the administrative control of this Court as provided under Article 234 of the Constitution. Therefore, the matter is required to be examined from that angle to the extent that it is an award by the Court (Labour Court & Industrial Tribunal in the present case) which is not only judicially subordinate to this Court but also under the administrative control of this Court and when the awards passed by the Labour Courts and Industrial Tribunals are not implemented or executed or any breach thereof is committed this Court is having powers not only to issue directions on judicial side but also on administrative side to ensure that the machinery which is provided under the Act is properly given effect to and the purpose for which the provisions have been made under the Act are fulfilled by making the remedy more effective. In this regard we had called upon the Learned Advocate General Mr.S.N.Shelat representing the State of Gujarat for assisting the Court and we must record that the Learned Advocate General Mr.Shelat after taking instructions from the Secretary of the concerned department of the State Government has made the following statement:

> “On behalf of the State Government, it was submitted by the Advocate General that the recovery through revenue process is not affected because the cases that come up before the Recovery Officer are in the nature of bad debt, the Firm or Company being in bad financial state. As a result, sometimes it appears that the

recovery is not affected as it ought to be. However, the Advocate General stated that the State Government would instruct the concerned officials dealing with the revenue recovery to take effective steps for recovery under the award as expeditiously as possible, on the receipt of revenue recovery certificate pursuant to the order passed by the Labour Courts. The Advocate General also stated that the Government will also consider about setting up of Special Cells subject to financial constraint, for such recovery process arising out of awards made by the Labour Courts".

Mr.Shelat submitted before this Court that it will not happen that there is no machinery available at the State Government level more particularly at the District Collectorate level for the purpose of recovery on the recovery certificate issued by the Labour Court in exercise of powers under the I.D.Act. Mr.Shelat, Learned Advocate General has further submitted that to being with and with a view to see that the object of the Act is achieved, more particularly, the executing machinery as provided under section 33C of the Act, the State Government can make proper arrangement to have the offices of the Collectorate for Ahmedabad, Vadodara, Surat and Rajkot for the speedy recovery certificates issued by the competent Court. We must record the sense of appreciation and cooperation extended by the State Government through the learned Advocate General and we also direct that the Secretary of the concerned department of the State Government will see to it that the stand taken by the Learned Advocate General and referred hereinabove is complied with in its true

spirit by making arrangements initially at the aforesaid four districts and subsequently considering the quantum of work the additional establishments be given so that it may not happen that even if the recovery certificates are issued by the Labour Courts or the Industrial Tribunal under the I.D.Act the monetary benefits are not released on account of want of machinery available at the District Collectorate Level.

18. There is also considerable force in the contention raised by the petitioners that the Labour Courts are not deciding the recovery applications made by the workmen under Section 33C of the I.D.Act for a ling time. In this regard it is worthwhile to note that as per section 33C(2) of the I.D.Act there is a mandate of the legislature that the Labour Court should decide such application within a period not exceeding 3 months. Therefore, it has got to be held that it is obligatory on the part of the Labour Court to take up the recovery application under section 33C(2) of the I.D.Act which may be made by the workmen concerned on priority basis and must make full efforts to see that such recovery applications are heard and disposed of by the Labour Court within a period not exceeding three months. It will be the duty of the Presiding Officer of the Labour Court to decide such applications within a period not exceeding three months and if such application is not decided within three months as per the mandate of the legislature it shall also be the duty of the Presiding Officer of the Labour Court to reco0rd the reasons for not deciding the same within a period of three months and such reasons must be extraordinary. However, so far as the recovery application under section 33C(1) of

> the I.D.Act is concerned, the time limit for its decision has not been prescribed, but from the perusal of the language of section 33C(1) of the I.D.Act it transpires that the money becomes due to the workman concerned from the employer and therefore the legislature has provided for making application within one year from the date on which the amount becomes due. It can reasonable construed that such an application should be decided by the Court concerned within a reasonable period which can be said to be of six months from the date of such application. In out view there is no reason for not to read that such an obligation upon the Court concerned or the residing officer of the Court concerned to decide such application under section 33C(1) within a period of six months and we are of the view that if such an obligation is read the very object with which the section 33C is enacted would be served."

9. Learned advocate for the petitioner also relied upon the Division Bench judgment of this Court in the case of **Municipal Nokariyat Mandal Vs. Municipal Corporation of the City of Bhavnagar & Others**, reported in 2005 II CLR 39, whrein it is held that:

> "employer to pay dues of workmen with interest."

9.1 The judgments which are sought to be relied upon by the petitioner will not help the petitioner since no details are given under Section 33-C(2). The ratio laid down in the above cases is entirely on different facts.

10. In that view of the matter, at this stage, no writ can be issued, keeping in mind the affidavit in reply and financial incapacity of the respondent.

11. Hence, the petition is rejected. Rule is discharged with no order as to costs.

(K.S.JHAVERI, J.)

***Shitole**